

## 37. DECERTIFICATION

“During the Spring of 1989, the Complainants and other members of American Federation of State, County and Municipal Employees Local Union No. 16 20 were active in an unsuccessful attempt to decertify the American Federation of State, County and Municipal Employees as the exclusive bargaining representative for their bargaining unit.” **ULP #62-89.**

“[I]t is hard to characterize this matter as a decertification question when it is the incumbent union requesting the alteration in the bargaining unit. As times change, so do units.” **UC #2-88.**

### 37.1: Petition

“The petitioner is requesting decertification rather than petitioning for New Unit Determination.” **UD #19-75**

The petitioner “had no knowledge of the existing working agreement [between the Employer and the police officers] because it was not filed with this Board in accordance with **ARM 24.26.501**.... [T]he petition is hereby amended to read Petition for Decertification. Because ... [it is a] Decertification Petition, the incumbent representative ... shall appear on the ballot.” **UD #7-79**

“The difference in procedures between a Petition for Decertification and a Petition for Unit Determination and Election is not significant and no harm can be shown to the Employer. The existence of a harmless error is no basis for the dismissal of the petition.” **UD #7-79**

“[T]he statute that gives life to a decertification proceeding (essentially what the petitioner is attempting to implement here) provides that the basis for such a proceeding is the assertion that ‘...the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit....’ (Section **39-31-207(1)(a)(ii)**)” **CC #2-81 District Court (1983)**

“The purpose of a decertification petition is to test whether the exclusive representative still represents a majority of the members of a bargaining unit.... A decertification proceeding does not determine what the appropriate unit should be, **24.26.655(2) ARM**, but merely what the bargaining unit is and after an election whether the members still want the same exclusive representative, a different exclusive representative, or no representative.” **DC #8-81 District Court Decision (1982)**

“Petitions for Decertification proceedings are provided for in Section **39-31-207 MCA** and **ARM 24.26.643.**” **DC #10-89.**

See **DC #11-90** and **ULP #10-90**.

**37.11: Petition – Contents [See also 33.323.]**

“Petitioners seek to decertify a part of an established bargaining unit. Such a procedure is contrary to the well recognized rule against partial disestablishment and fragmentation of a bargaining unit. Such a procedure, if allowed, would promote, not prevent, strife, unrest and instability within the collective bargaining area.” **DC#5-75**

“[T]he hearing examiner was in error in deciding that this Board’s present rules established a procedure for partial decertification of an existing bargaining unit.” Subsections (e)(ii) and (f) of Regulation **24-3.8(14)-S8090(1)** (the present rule on decertification) “refer to ‘the unit’ meaning the entire certified or recognized bargaining unit.” **DR #1-76**

“[I]mmediately upon filing the petition the two other parties raised a question as to the propriety of the unit. That question did not belong in these proceedings and the examiner and the board, under its own rules, were not authorized to deal with it as part of the proceedings.” **DC #22-77 District Court Decision (1978)**

“Judge Bennett ruled in **DC #22-77** ... that once a decertification petition is filed with the Board, the Board decides whether reasonable cause exists to believe there is a question of representation. If there is, an election is to be held. Questions of the propriety of the unit do not belong in such proceedings and the Board, under its own rules, is not authorized to deal with it as part of the proceedings.” **DC #11-79**

“The error made on the petition [that is, not specifically detailing all locals of the union] ... was surely not intentional and must be considered harmless.” **DC #15-79**

“This Board has adopted a policy which is consistent with the National Labor Relations Board in denying attempts at partial decertification of recognized or certified bargaining units.” **UD #2-81**

“Rule **24.26.644(2) ARM** states: ‘The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of filing of the petition.’ ... [I]n accordance with rule **24.26.644(2) ARM**, hours of employment after April 3, 1981 (the filing date specified in the Notice of Election) cannot be considered qualifying for purposes of voter eligibility in this election.” **DC #8-81**

See also **UM #3-77** and **DCs #2-75, #6-76, #12-77, #4-78, #3-79, and #4-79**.

“In Declaratory Judgment No. 1-76 [DR #1-76] the Board set forth its policy regarding the requirements for decertification. . . [I]f a petition does not allege that the present bargaining representative does not represent the interests of the majority of the employees in the present bargaining unit it is not a proper decertification petition.” **DC #19-85.**

“AFSCME represents highway maintenance employees on a state-wide basis. The employees in the five counties petitioned for by the Teamsters represent only a part of the overall state unit.” **DC #19-85.**

“**ARM 24.26.644(2)** provides: ‘The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the petition.’” **DC #10-89.**

### **37.12      Petition – Standards**

“If a petition does not allege that the present bargaining representative does not represent the interests of the majority of the employees in the present bargaining unit or if a petition is not accompanied by a showing of proof of 30 percent of the entire unit, it is not a proper decertification petition under our rules.” **DR #1-76**

“A change in administration or a change in personnel, in itself, is not a factor in determining as appropriate bargaining unit.” **DC #6-78**

“All efforts, once a decertification petition is filed, should be directed toward expediting the election process to its finality.” **DC #11-79**

### **37.13:      Petition – Time for filing**

“What the petitioners are requesting here is a partial decertification of a bargaining unit.... [S]uch a petition is cognizable under our rules, but only if the condition of a decertification petition is met. (See **DE #1-76.**) That is, the 60-90 day rule is complied with. That condition is not met in this petition.” **DR #2-76**

The petition was “filed timely during the window period.” **DC #15-79**

“**ARM 24.26.643(2)** provides: ‘The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the terminal date thereof.’” **DC #10-89.**

“The NLRB has developed rules of timeliness in an attempt to reduce the uncertainty of the three progressive distinct procedural stages that arise at or

near the terminal date of a collective bargaining agreement. ***Deluxe Metal Furniture Co.*, 121 NLRB 995, 142 LRRM 1470 (1958)**. First, the rules provide an ‘open period’ affording employees the opportunity for a free choice of bargaining representatives at reasonable intervals.... Secondly, NLRB rules provides for an ‘insulated period’ wherein petitions for decertification will not be considered. The ‘insulated period’, which immediately follows the open period, is intended to allow the parties to negotiate free from disruptions or uncertainty.... Lastly, the rules provide for the ‘post-terminal date’ period. If a union and an employer do not enter into a successor collective bargaining agreement during the insulated period, a petition for decertification will be considered timely if filed after the expiration date of the agreement.” **DC #16-89**.

**37.14: Petition – Notice**

“The stipulation is valid, it waived the Board rules on the time required for posting the Notice of Election. Therefore, the Montana Education Association objection to the election is without merit and the election should be certified.” **DC #4-83**

**37.15: Petition – Showing of Interest [See also 32.2.]**

“[S]tability in labor relations and prevention of strife and unrest are not the only goals of our Board. We are not callous to employees’ desires as to representation. That is of paramount concern to us. We cannot, however, lightly set aside an election result because of a disagreement with the bargaining unit’s representative. The vote of the majority who participated in the election must also be protected.” **UM #5-76**

Referring to Section **59-1606**, “the employees are to decide if they wish the incumbent bargaining representative to continue to represent them. The incumbent, therefore, is an essential party to the decertification proceedings.... This Board shall no longer require that the incumbent bargaining representative present a 10 percent showing of interest in order to be placed on the ballot in a decertification proceeding.” **DC #8-77**

“[C]ard signers will be bound by the clear language of the card unless they have been given misrepresentations that clearly preclude their signatures.... [A]lso ... before the courts will overturn the results of a showing of interest by authorization cards, there must be evidence of a sufficient number of signers having been given misrepresentations so as to find that a majority (or other applicable percentage) of the signers did not support the petitioned issue....” **ULP #14-77**

“The Hearing Examiner sees nothing prejudicial to the rights of those signing the cards by the mere use of the term ‘vote of confidence,’ as it appears quite fair to use that term in the context of looking ahead to a representation election

where all those supporting the Coalition would have the opportunity to so express themselves.” **ULP #14-77**

The Board of Personnel Appeals’ Rule **24.26.503 ARM** states: “The proof of interest submitted with any petition shall not be furnished to any of the parties. The Board shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.’ Therefore, an issue concerning the proper showing of interest may not be raised.” **DC #15-79**

“The concern of both this Board and the National Labor Relations Board is if the prima facie claims of representation are substantial [enough] to warrant the expense and effort of an election.” **DC #15-79**

“The mere filing of a decertification petition, at its very least, is a symbolic statement fulfilling the requirements of an interest statement.... A rival labor organization would not expend effort and money in a decertification election without a solid chance of winning.” **DC #15-79**

“Statements contained on the authorization cards which are related to the requirement of **ARM 24.26.543(6)(b)** surely conforms in spirit with the rule.” **DC #15-79**

“The issue in this matter is not to determine the appropriate unit but, instead, we must determine the existing unit.” **DC #2-81**

“Logically, it follows that once a bargaining unit is defined, the bargaining agent or exclusive representative may be discovered. The reverse may also be true.” **DC #2-81**

“The bargaining unit appropriate in a decertification election must be coextensive with either the unit previously certified or the one recognized in the existing contract unit.” **DC #2-81**

“In consequence of the long bargaining history, the exclusive recognition granted the Craft Council and the negotiation of a single labor contract, there exists only a single bargaining unit.” **DC #2-81**

“The appropriate bargaining unit consists of approximately 250 individuals. The Petitioners submitted individually signed proof-of-interest cards of at least 30 percent of five individuals (the Petitioners – sign and maintenance painters). Therefore, an insufficient number of individual proof-of-interest cards were submitted to file a decertification election in the appropriate bargaining unit.” **DC #2-81**

**37.16: Petition – Standing**

See **DC #8-77**.

“At the hearing AFSCME moved to dismiss the decertification petition on the grounds that the Public Employees Craft Council, not the Teamsters Union, was the proper organization to file a decertification petition. That motion is hereby denied. Section **39-31-207 MCA** specifically allows such petitions by a labor organization. The parties stipulated that the Teamsters Union is a labor organization. See also **ARM 24.26.643**.” **DC #19-85**.

**37.2: Hearing**

“The statute is clear, and restrictive, with regard to the hearing to be held upon the filing of a decertification petition... (Section **59-1606(1)(b)**).... This provision, standing alone and taken at face value, would... limit the hearing to one particular question, i.e., whether there is a question of representation. If such a question exists then the board or its agent holds an election. The regulation derived from this statute [**ARM 24.26.547**] is not so clear and doesn't follow the statute.” **DC #22-77 District Court Decision (1978)**

**37.3: Dismissal of Petition**

See **UD #9-79** and **ULP #20-78** and **DCs #5-75, 11-79, and 2-81**.

See **DCs #19-85 and #16-89**.

**37.5: Decertification Election**

“[I]n view of this Board's investigation and the unfair labor practice charges filed prior to the filing of this decertification petition, an election will not be scheduled until this Board is assured that the necessary laboratory conditions are present.” **ULP #20-78**

See also **UDs #1-79 and #7-79; DCs #8-77, #22-77, #5-78, #6-78, and #15-79; ULP #36-77 and ULP #20-78 Montana Supreme Court (1979) and District Court (1981)**.

“Under Section 9(c)(1) of the NLRA the NLRB will conduct an election to strip an incumbent union of its bargaining rights if the decertification petition meets certain requirements. The appropriate unit for an election is the unit previously certified by the NLRB or recognized by the employer.” **DC #19-85**.

“[T]here being no other bargaining representative's name to appear on a ballot, it is not necessary to conduct an election in this matter.” **DC #11-90**.

See also **DC #10-89**.

**37.8: Effect of Bargaining Rights**

“Allowing a section of a recognized or designated bargaining unit to be carved out from a larger unit would be counter-productive and run directly contrary to the stated philosophy of the Collective Bargaining Act.” **DC #5-75**

“To allow the challenges would be the equivalent of allowing the employer to petition to modify the existing unit.” **DC #11-79**